



August 18, 2003

Via Electronic Mail Delivery

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***Re: Written Ex Parte Communication
Wireless Local Number Portability Implementation
CC Docket No. 95-116***

Gentlemen:

Sprint Corporation, on behalf of its landline and wireless divisions ("Sprint"), submits this written *ex parte* in response to arguments advanced recently by Qwest Corporation ("Qwest").¹ As Sprint demonstrates below, the Commission cannot as a matter of law, and should not as a matter of policy, grant the relief Qwest seeks. There is no basis to delay intermodal porting for some time while a new rulemaking is conducted and concluded. Qwest's additional argument that wireless carriers are asking landline local exchange carriers ("LECs") to provide location portability should also be rejected.

I. The Commission Cannot Grant the Relief Qwest Seeks

Qwest asks the Commission to delay intermodal porting while the Commission conducts a new rulemaking proceeding to investigate certain issues that Qwest has identified.² The Commission cannot grant this relief as a matter of law.

¹ Qwest did not file comments (or replies) in response to CTIA's January 23, 2003 "rate center" petition. It did file comments (but not replies) in response to CTIA's May 13, 2002 "implementation issues" petition, but those comments were limited to a "single issue" (porting intervals) unrelated to the new issues Qwest has been advancing in recent weeks. Qwest Comments, CC Docket No. 95-116, at 1 (June 16, 2003). Qwest's injection of new issues and arguments at this date makes FCC decision-making more difficult.

² See Qwest Ex Parte Letter, CC Docket No. 95-116, at 2 (July 24, 2003)("[I]ntermodal portability between wireline and wireless providers should be deferred until such time as the Commission has initiated a *Notice of Proposed Rulemaking* to further consider" issues Qwest newly raises.); Qwest Ex Parte Letter, CC Docket No. 95-116, at 2 (July 18, 2003)("[T]he FCC should defer intermodal LNP implementation

Congress has imposed on “[e]ach local exchange carrier” the “duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”³ Congress has defined number portability as the ability of customers “to retain, at the same location, existing telecommunications numbers . . . when switching from one telecommunications carrier to another.”⁴

It should be beyond dispute that Qwest is capable of providing LNP to wireless carriers; indeed, it is already providing LNP to landline telecommunications carriers. So long as Sprint PCS provides its services “at the same location” where a Qwest customer wanting to port receives his Qwest services and so long as Sprint PCS is LNP-capable, Qwest has the statutory duty to permit its customers to port numbers to Sprint PCS. Sprint PCS is a telecommunications carrier, and as the Commission recognized in its *First LNP Order*, LECs must – under statute – provide LNP to all telecommunications providers, including wireless providers:

Because the 1996 Act's definition of number portability requires LECs to provide number portability when customers switch from any telecommunications carrier to any other, the statutory obligation of LECs to provide number portability runs to other telecommunications carriers. Because CMRS falls within the statutory definition of telecommunications service, CMRS carriers are telecommunications carriers under the 1996 Act. As a result, *LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers.*⁵

Qwest's statutory duty to provide LNP to wireless carriers exists independently of the Commission's wireless LNP rule.⁶ By statute Qwest is required to permit its customers to port their numbers to wireless providers – so long as the provider is LNP-capable and capable of receiving ported numbers.⁷

until such time as the FCC has initiated a *Notice of Proposed Rulemaking* to weigh” certain issues Qwest raises.).

³ 47 U.S.C. § 251(b)(2).

⁴ 47 U.S.C. § 153(3).

⁵ *First LNP Order*, 11 FCC Rcd 8352, 8357 ¶ 8 (1996)(emphasis added).

⁶ See 47 C.F.R. § 52.31.

⁷ The FCC does not possess the authority to waive or suspend mandatory duties set forth in statutes. See, e.g., *MCI v. AT&T*, 512 U.S. 218 (1994). The FCC could exercise its Section 10 forbearance powers to relieve LECs of their statutory duty to provide LNP to wireless carriers. But given that such action would *limit* the competitive choices available to LEC customers, it is unlikely the FCC could find the presence of the statutory forbearance criteria. Sprint also notes that no LEC (including Qwest) has filed such a forbearance petition.

II. The Rulemaking Qwest Proposes Has No Purpose

Qwest asks the Commission to commence a new rulemaking to address the issues discussed below.⁸ The requested rulemaking is unnecessary.

1. Alleged Implications to Consumer. Qwest says a rulemaking is needed to consider the “implications” of intermodal portability “to the consumer.”⁹ According to Qwest, intermodal portability will result in “customer confusion” because it will “no longer [be] possible for a customer to properly use the NPA-NXX of the telephone number to determine whether the call will be local or toll.”¹⁰ Qwest further suggests it may face “billing problems” from intermodal porting because “calls to the ported telephone number *may* appear to the billing systems as local and not billed even though toll charges should apply to a call that is routed to a rate center outside the local calling area.”¹¹

These assertions are not accurate. All telephone numbers (landline and wireless) are “rated” to a particular incumbent LEC rate center, and the rate center association of a given number does not change when the number is ported from one carrier to another. Thus, if a call to a number was local before the port, it necessarily will remain local after the port. Conversely, if a call to a number was toll before the port, it will remain a toll call after the port.

Qwest states that an intermodal port will “result in a telephone number no longer being associated with a specific location.”¹² However, the physical location of a wireless customer and her mobile handset (to which the number is assigned) has never had any bearing on how LECs rate their land-to-mobile calls. LECs rate calls as local or toll by “analyz[ing] the rate center associated with the NPA/NXX of the calling and called parties,”¹³ and the rate center association of a number does not change when the number is ported. As a result, the manner in which Qwest bills the person calling the ported number will be the same as before the same number was ported.¹⁴

⁸ See note 2 *supra*.

⁹ Qwest July 24 Ex Parte Letter at 2.

¹⁰ *Ibid.*

¹¹ *Id.* at 2 (emphasis added).

¹² *Ibid.*

¹³ Qwest July 24 Ex Parte Letter at 4. The LEC convention of comparing the rate centers of the NPA-NXXs of the calling and called parties is used “industry-wide.” See *Virginia Arbitration Order*, 17 FCC Rcd 27039 at ¶ 301 (2002).

¹⁴ Qwest also cites to an ALTS concern about “the *potential* impact on billing systems as different telephone numbers within a single NXX code could become associated with different rate centers through ports within a wireless MTA.” Association for Local Telecommunications Services Reply Comments, CC Docket No. 95-115, at 3-4 (June 24, 2003)(emphasis added), *cited by* Qwest July 24 Ex Parte Letter at n.4. This ALTS concern is unfounded because no wireless carrier is proposing to change the rate center association of ported numbers; a ported number will always be rated according to the original rate center.

Thus, LNP generally, and intermodal porting in particular, has no impact on the way LECs rate calls as local or toll. Since rating remains consistent, intermodal porting will not cause customer confusion because nothing changes for customers when they call a ported, as opposed to non-porting number.

2. Alleged LEC Costs. Qwest says a rulemaking is needed to consider “the costs of [intermodal portability] implementation by incumbent LECs, CLECs, and cable telephony providers.”¹⁵ In fact, the costs a “porting-out” carrier like Qwest will incur to implement a port request are the same whether the “porting-in” carrier is a competitive LEC, a cable telephony provider or a wireless carrier. The technology the “porting-in” carrier uses in the provision of its services has no bearing on the costs the “porting-out” carrier incurs in porting the number.¹⁶

3. Alleged “Technical and Regulatory” Obstacles. According to Qwest, telephone numbers cannot be taken “outside the rate center” because of “unacceptable obstacles,” including “technical and regulatory obstacles [that] prohibit LECs from porting outside the rate center.”¹⁷ These Qwest allegations, never explained, cannot be correct.

Qwest and its predecessors have been routing land-to-mobile calls (including to its own wireless affiliate) for nearly 20 years. Although a wireless handset may be physically located anywhere within a wireless network at any given time (this is inherent to mobile service), Qwest has never faced “technical and regulatory obstacles” in routing and rating land-to-mobile calls. The mobility associated with a wireless handset (and the number assigned to the handset) does not impact how LECs route their land-to-mobile calls to wireless carriers.¹⁸ Whether a number is ported or not, a LEC such as Qwest merely has to route the call to the wireless carrier – in exactly the same way it always has – and to rate the call by reference to originating and terminating rate center – as it always has.

It is also notable that Qwest permits its own customers to take their telephone numbers “outside the rate center.” With its tariffed foreign exchange (“FX”) service, a Qwest customer

¹⁵ Qwest July 24 Ex Parte Letter at 2.

¹⁶ Sprint recognizes that LECs may incur incremental costs associated with wireless LNP (e.g., increased NPAC costs, additional testing costs) because LECs will be porting numbers to additional carriers and because the number of LEC customers interested in porting will presumably increase. However, the FCC has already adopted a LNP cost recovery mechanism for incumbent LECs, and if a LEC like Qwest believes its cost recovery plan requires adjustment, that LEC can petition the FCC to amend its cost recovery plan. LNP cost recovery has nothing to do with the technical feasibility of intermodal portability.

¹⁷ Qwest July 24 Ex Parte Letter at 1-3.

¹⁸ Wireless carriers maintain at least one point of interconnection (“POI”) in each LATA. LEC route their land-to-mobile calls to this POI regardless of the physical location of the wireless customer at the time of the call. Thus, if a wireless customer is across the country at the time of the call, the LEC still delivers the call to the wireless carrier in the originating LATA, and the wireless carrier assumes responsibility of delivering the call to its customer. These interconnection and call routing arrangements do not change if a wireless customer happens to use a ported, rather than a non-porting number.

can reside in one rate center and have a telephone number rated in another rate center.¹⁹ Thus, for example, a Qwest customer moving from one rate center to another can retain his existing telephone number and local calling area simply by subscribing to Qwest's FX service. Although the customer would be physically located in Rate Center X and although the customer's loop (and the telephone number associated with that loop) would be physically located in Rate Center X, the Qwest FX customer receives service as if he resided in Rate Center Y. Qwest's tariffed FX service demonstrates that there are no "technical and regulatory obstacles" that prohibit LECs from assigning numbers associated with loops "outside the rate center."

4. Alleged Competitive Inequalities. Qwest says that a rulemaking is necessary so the Commission can consider "competitive inequalities for LECs" from intermodal porting and that intermodal portability would "create a competitive inequity between service providers who have already implemented LNP."²⁰ Qwest does not, however, identify the alleged competitive inequality.

In fact, it is not possible for intermodal porting to cause competitive inequalities to carriers "who have already implemented LNP," because the Commission made clear in its *First LNP Order* that "LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers."²¹ Hence, any competitive inequality that a LEC may perceive is statutory in origin. Further, the fact that wireless carriers are implementing LNP after LECs has nothing to do with competitive inequalities – as evidenced by the fact that Qwest wants to delay intermodal porting even further.²²

5. Expanding the Size of Rate Centers. Qwest finally says that a rulemaking is needed if the Commission "were to consider making the LATA or the NPA the relevant geographic area for numbering."²³ According to Qwest, enlarging rate center boundaries would have enormous implications for LECs, including upgrades to switch capacity, reconfiguration of trunks and switches, and major changes to operational support and billing systems.²⁴

The simple response is that no one has proposed that the Commission change in any way (much less enlarge) current rate center boundaries to accommodate wireless LNP. Consequently, the harms Qwest fears will not occur.

¹⁹ See Qwest Private Line Transport Services Tariff, COLO. PUC No. 19, at First Revised Sheet 31, § 5.2.6.A and Second revised Sheet 33, § 5.2.6.B.10 (effective August 1, 2003).

²⁰ Qwest July 24 Ex Part Letter at 2 and 5.

²¹ *First LNP Order*, 11 FCC Rcd 8352, 8357 ¶ 8 (1996).

²² The FCC decided that wireless carriers should deploy LNP after LECs because wireless carriers "face[d] technical burdens unique to the provision of seamless roaming on their networks, and standards and protocols will have to be developed to overcome these difficulties." *Id.* at 8439 ¶ 164.

²³ Qwest July 24 Ex Parte Letter at 4.

²⁴ *Id.* at 4-5.

Also baseless is Qwest's allegation that "wireless providers . . . [are] encouraging the Commission to ignore the rate center boundary altogether."²⁵ As noted above, the rate center association of a ported number does not change; the telephone number always remains assigned to the original rate center.

III. Wireless Carriers Are Not Asking LECs to Provide Location Portability

In recent *ex parte* presentations, Qwest has begun asserting that wireless carriers seek to "broaden the definition of LNP" by expanding LNP "beyond the wireline rate center" and that this expansion "is equivalent to Location Portability."²⁶ More recently, Qwest has claimed that the way wireless industry wants define LNP goes "well beyond location portability."²⁷ These assertions are not correct.

The Act defines number portability as the ability of customers "to retain, *at the same location*, existing telecommunications numbers . . . when switching from one telecommunications carrier to another."²⁸ This is the portability wireless carriers seek (and which the Act requires). If, for example, a customer currently served by Qwest wants to port his number to Sprint PCS, that customer has a right to port his number to Sprint PCS – so long as Sprint PCS provides services "at the same location" where the customer had received his services from Qwest. As the Commission has previously recognized, "[w]e regard switching among wireless service providers and broadband CMRS providers . . . as changing service providers" and thus falling within the category of service provider portability.²⁹

In contrast, wireless carriers are *not* asking LECs to provide location portability, which FCC rules define as the ability of customers "to retain existing telecommunications numbers . . . *when moving from one physical location to another*."³⁰ Location portability does not generally involve any change in service providers. The capability would be invoked when a customer moves from one location to another, with the customer wanting to keep both his telephone number and service provider.

In addition, location portability involves the re-association, or reassignment, of a telephone number from the original rate center to another.³¹ Location portability, unlike service

²⁵ *Id.* at n.1 and 3.

²⁶ See Qwest July 24 Ex Parte Letter at 5; Qwest July 18 Ex Parte Letter at 1.

²⁷ Qwest July 24 Ex Parte Letter at 3.

²⁸ 47 U.S.C. § 153(3)(emphasis added).

²⁹ *First LNP Order*, 11 FCC Rcd at 8443 ¶ 173.

³⁰ 47 C.F.R. § 52.21(h)(i)(emphasis added).

³¹ For example, a customer might want to retain her number when moving from Washington, D.C. to Boston. Under location portability, the customer's D.C. number (containing a 202 NPA) would become associated with a Boston rate center, and calls to this D.C. number would become toll to callers in D.C. but local to callers in Boston. Sprint agrees that this arrangement, true location portability, would cause

provider portability, thus changes the way that calls to the number are rated as local or toll. Qwest is therefore wrong in suggesting that wireless carriers want the Commission to “expand the current LNP rules to require location portability.”³²

Qwest has told the Commission that “[w]ireless carriers must have a *presence* in every wireline rate center from which they wish to port a number.”³³ Sprint agrees that a wireless carrier must provide its services at a LEC customer’s location before the customer can port his number to a wireless carrier.³⁴ If a wireless carrier does not provide service where a current Qwest customer receives its Qwest services (*i.e.*, “at the same location”), then Qwest is under no duty to port the number to the wireless carrier because this would not constitute number portability as defined in the Act. As a practical matter, however – and to state the obvious – few Qwest customers would be interested in canceling their Qwest service and porting their number to a wireless carrier if that wireless carrier did not provide service at the customer’s location.

IV. The “Port Back” Issue

During Sprint and T-Mobile meetings with the Commission on August 7, 2003, Staff inquired about a “port back” scenario whereby a LEC customer ports his number to a wireless carrier, the customer then moves out of the original rate center and changes his billing address, after which the customer wants to port back to the LEC. The Staff related LEC concerns that they would be placed at a competitive disadvantage in winning back the customer because calls to that customer’s number would be rated differently than calls to other customers living within that same rate center in which he now lives (since the customer’s number stays associated with the original rate center).

At the outset, Sprint does not believe that the scenario outlined will occur with much frequency.³⁵ Indeed, unless the customer moves outside the original local calling area (not just the original rate center), the “problem” will not occur.

customer confusion, but this arrangement is not present with service provider portability because the rate center association of the ported number does not change.

³² Qwest July 24 Ex Parte Letter at 2.

³³ Qwest June 19 Ex Parte Handout at 4 (emphasis added).

³⁴ Rural LECs have argued that wireless carriers must not only provide service in the rate center, but must also meet other conditions (*e.g.*, telephone numbers rated in the rate center, a direct connection to the ILEC switch serving the rate center). Congress did not condition an ILEC’s LNP duty on competitive carriers having a particular interconnection arrangement. In addition, the FCC would have to change its existing interconnection rules before it could impose these additional requirements on wireless and other carriers.

³⁵ The LEC example requires the presence of four different variables: (1) a LEC-to-CMRS port; (b) the customer then moves outside the rate center and outside the local calling area; (3) upon moving, the customer decides to retain her telephone number even though neighbors in the new area would incur toll charges in calling the handset; *and* (4) the customer then decides to port back to the LEC. As noted, few wireless customers retain their wireless number upon moving to a different local calling area. In addition,

Further, it is important to understand that a rate center and a local calling area often are not identical. An incumbent LEC may have several rate centers within a single local calling area.³⁶ Thus, if a customer moves from one rate center to another when both rate centers are located in the same local calling area, the local calling area for the customer will remain the same despite the customer's change in address (and change in rate centers).

In this regard, most wireless customers retain their telephone number upon moving *only* if the new location is in the same local calling area as the original rate center. The vast majority of mobile customers obtain a different telephone number if they move any significant distance from their original location, because if they do not change their number, calls from friends, family and colleagues in the new location would incur toll charges in calling the wireless number.³⁷

Importantly, there is no "competitive inequality" even if a wireless customer decides to retain his wireless number upon moving to a different local calling area. With service provider portability, the ported number always remains associated with, or "rated" to, the original rate center. Thus, if a customer, whether landline or wireless, chooses to retain his number upon moving to a different local calling area (and assuming the customer's service provider is willing to offer this feature), it is the customer that chooses to have a different local calling area than other persons located in the new calling area. The situation described – a moving customer has a different local calling area than other persons in his new neighborhood – applies whether a LEC or wireless carrier serves the customer.

V. Conclusion

Sprint offers both fixed landline and mobile wireless services – as does Qwest. However, Sprint does not agree with Qwest's identified intermodal porting concerns and does not agree that there is technical infeasibility presented. Qwest has a statutory obligation to provide service provider portability to CMRS carriers that are LNP-capable.

to the extent there are such customers willing to retain a number in a different local calling area, Sprint suspects that few of these customers will then abandon mobile service for fixed service.

³⁶ As a result, wireless carriers, while obtaining numbers in every local calling area where they provide service, often do not obtain numbers in every LEC rate center. This wireless carrier practice conserves millions of scarce telephone numbers. *See* Sprint Ex Parte Letter, CC Docket No. 95-115, at 6 (Aug. 8, 2003) (Sprint would be compelled to obtain over nine million additional numbers if required to obtain a thousands block in each LEC rate center where it provides its wireless services).

³⁷ Assume a mobile customer who recently graduated from high school in New York City and that is attending college in Washington, D.C. If this person retains his New York number, the parents and friends who remain in the City could call the student without incurring toll charges. However, new friends and acquaintances would incur toll charges, even though the student may be located across the hall in a dorm, because the student has a New York telephone number (*e.g.*, containing a 212-NPA). On the other hand, if the student switches to a D.C. number (with a 202 rather than a 212 NPA), new friends can call the student locally while parents and others in New York City would incur toll calls (just as if they called the student at his dorm room's landline telephone number).

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Pursuant to Section 1.1206(b)(1) of the Commission's rules, one copy of this letter is being filed with the Secretary's office for filing in CC Docket No. 95-116.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Lancetti', with a long horizontal flourish extending to the right.

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